

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

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Truth-in-Billing
and
Billing Format)

FEDERAL COMMUNICATIONS COMMISSION

OFFICE OF THE SECRETARY

CC Docket No. 98-170

Petition for Temporary, Limited Waiver

Delhi Telephone Company ("Delhi"),¹ by counsel, hereby seeks temporary, limited waiver of the Truth-in-Billing ("TIB") requirements established by the Federal Communications Commission ("Commission" or "FCC") in its First Report and Order and Further Notice of Proposed Rulemaking in the above-captioned matter.² Specifically, Delhi seeks temporary waiver of the requirements of Section 64.2401(a)(2) regarding separating charges by service provider (the "TIB Separate Provider Requirement")³ and Section 64.2401(d) regarding

¹ Attachment A contains the declaration of Steven Barker, Vice President and General Manager of Delhi. The declaration bears a facsimile signature. The original signed declaration will be filed upon receipt by counsel.

² In the Matter of Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, FCC 99-72, released May 11, 1999, 64 Fed. Reg. 34488 (June 25, 1999) ("TIB Order"); Errata, CC Docket No. 98-170, DA 99-2092, released October 6, 1999.

³ In pertinent part, 47 C.F.R. § 64.2401(a)(2) states that "[w]here charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider. . . ."

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disclosure of inquiry contacts (the "TIB Inquiry Contact Requirement")⁴(collectively, the "TIB Requirements"). Delhi seeks this waiver until April 1, 2000.

Delhi, which is a member of the United States Telecom Association ("USTA"), recognizes that a pending Petition filed by USTA seeks similar relief for USTA member companies.⁵ Moreover, Delhi recognizes that a pending Joint Petition filed by the National Exchange Carrier Association, Inc., the National Telephone Cooperative Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies, Inc. (collectively the "Associations") also seeks similar relief for their member companies. Accordingly, in the event that action on the USTA Petition and/or the Associations' Petition does not grant the extent of the relief requested herein, Delhi requests a waiver of the TIB Requirements until April 1, 2000.

Until the requested waiver expires, Delhi will continue to work diligently with its billing software vendor in order to have the necessary software changes made and tested in order to comply with the TIB Requirements. Moreover, even after the waiver expires, Delhi's customer representatives will continue to provide assistance to customers with questions concerning

³ 47 C.F.R. § 64.2401(d) states that:

Telephone bills must contain clear and conspicuous disclosure of any information that the customer may need to make inquiries about, or contest charges, on the bill. Common carriers must prominently display on each bill a toll-free number or numbers by which customers may inquire or dispute any charge contained on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided that such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve consumer complaints on the carrier's behalf. Each carrier must make its business address available upon request to consumers through its toll-free number.

⁵ See Public Notice, DA 99-1616, released August 13, 1999.

charges from particular carriers. Delhi respectfully submits that these actions will ensure that the underlying public interest objectives of the TIB Requirements will be advanced during the time that the requested waiver is in effect.

I. Background

Delhi provides exchange and exchange access services to approximately 5,300 lines in New York. Delhi is a rural telephone company under the Communications Act of 1934, as amended. Delhi uses EUR Data Center, Inc. ("EUR") as its billing vendor. In June, 1999, after the release by the FCC of its TIB Order, Delhi in conjunction with other companies began addressing the various TIB requirements with EUR in order to ascertain what billing system changes would be required to ensure Delhi's compliance. Accordingly, Delhi included these activities as one part of its Year 2000 issue checklist associated with all of its computer-based systems. Although TIB compliance efforts were undertaken, Delhi will not be able to comply with the TIB Requirements by November 12, 1999.⁶

The need for this waiver arises from the billing services that Delhi provides for charges for casual calling and alternate service providers (collectively referred to as "AOS providers"), i.e., carriers other than the presubscribed "1+" carrier of the customer. Specifically, Delhi receives data from the AOS provider's clearinghouse, which, in turn, are aggregated in one section of Delhi's end user bill. This bill section may identify one or, at times, several different AOS providers based on the customer's decision to make a casual call or to use an alternative service provider in a given billing cycle. The charges that Delhi receives are sorted by customer

⁶ See 64 Fed. Reg. 55163 (Oct. 12, 1999); see also Public Notice, DA 99-2030 (Sept. 30, 1999) and Public Notice, DA 99-1789 (Sept. 2, 1999).

and by date and time of that customer's usage. Delhi's existing billing system software does not, however, sort these call records by AOS provider where the records involve a "sub-CIC"⁷ of that provider.⁸ In addition, Delhi's existing software is not capable of placing the name of such an AOS provider or its toll free number on the bill.⁹ Accordingly, Delhi's existing software requires modifications to accommodate varying levels of screening and identification of an AOS provider, and to provide for the name and contact number of the AOS provider. These demands will, in turn, affect the processing time associated with rendering the bill. Compounding these challenges, however, is the fact that, on August 6, 1999, EUR informed Delhi that no programming changes would be undertaken until February, 2000 in light of Year 2000 issues.

Accordingly, Delhi will be technically incapable of complying with the November 12, 1999 date by which the TIB Requirements are scheduled to go into effect.¹⁰ Consistent with the implementation of other TIB-required billing software changes and based on discussions that

⁷ A "CIC" is the Carrier Identification Code assigned to a specific carrier. The use of "sub-CICs" allows other providers to share the CIC.

⁸ Delhi notes that the instances where AOS service providers are not separated on the bill should be minimal. Based on Delhi's experience, the vast majority of the customers being billed for AOS service provider calls make calls using only one (1) such provider. Delhi's review of a representative month's data indicates that the instances where charges for two (2) or more AOS service providers arise on a customer's bill occur in less than approximately one half of one percent (0.005), or typically less than twenty (20) of the approximately 4,200 end user bills that Delhi renders in a given month.

⁹ Although Delhi typically has the authority to issue credits to customers for AOS charges, the AOS providers may, independently, seek payment of those charges from customers. Accordingly, Delhi is not "fully authorized to resolve consumer complaints on the carrier's behalf." 47 C.F.R. § 64.2401(d). Moreover, Delhi notes that, in its experience, customer inquiries regarding AOS provider charges are minimal.

¹⁰ See n.6, supra.

Delhi has had with EUR, Delhi anticipates that compliance with these TIB Requirements should be possible by April 1, 2000.

**II. Good Cause Exists for and the Public Interest
will be Served by a Grant of this Limited Waiver**

Based on these facts and circumstances, Delhi respectfully submits that good cause exists for a grant of this limited waiver, and that the public interest will be served by such action. As demonstrated herein, while Delhi has made diligent efforts to comply with the TIB Requirements effective November 12, 1999, Delhi's software vendor will not be able to develop the necessary software required to meet the TIB Requirements by this date in light of the need to address Year 2000 issues.¹¹ Moreover, even assuming the availability of the software upgrades, Delhi would not be able to successfully test such upgrades by November 12, 1999. Delhi anticipates, however, that compliance with the TIB Requirements should be possible by April 1, 2000. Accordingly, for the reasons stated, good cause exists for this waiver.¹²

¹¹ Accord USTA Petition at 4, 9, and 11.

¹² "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative. Northeast Cellular Telephone Co., L.P. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

Delhi also respectfully submits that the public interest would be served by grant of this request. First, the Commission has recognized the need to balance the implementation of new regulatory directives which affect computerized systems with on-going Year 2000 activities.¹³ The software changes required by Delhi clearly fall into this Commission-defined category. The Commission's concerns regarding utilization of its Year 2000 Policy Statement to "'forestall' or 'roll back' disfavored regulations, or use this policy for purposes of competitive advantage"¹⁴ are not applicable here. Delhi will continue to work with EUR toward TIB compliance and seeks only a limited extension of time that is otherwise consistent with the underlying objectives which justified the Commission-prescribed compliance date of certain other TIB rules. Accordingly, there is no basis to conclude that Delhi is attempting to "forestall" or "roll back" disfavored regulations. In addition, there is no "competitive advantage" associated with this request. A grant of this waiver does not affect a competitor of the Delhi; rather it allows an interim measure to be implemented that allows continuation of existing billing arrangements for other carriers in a manner consistent with the status of the overall TIB compliance efforts by Delhi.

Second, the Commission has already determined that the April 1, 2000 date is appropriate for implementing other TIB rules.¹⁵ Accordingly, the ability of Delhi to continue to work toward the April 1, 2000 implementation date for all TIB rules would ensure efficiency and

¹³ See In the Matter of Minimizing Regulatory and Information Technology Requirements That Could Adversely Affect Progress Fixing the Year 2000 Date Conversion Problem, Year 2000 Network Stabilization Policy Statement, FCC 99-272, released October 4, 1999 ("Year 2000 Policy Statement") at para. 15.

¹⁴ Id. at para. 16.

¹⁵ See n. 6, supra.

continuity in the necessary enhancements of its billing system capability without incurring unnecessary expenditures or jeopardizing Year 2000 compliance issues.

Third, the underlying goal of the TIB Requirements -- the ability of a customer to identify a carrier and make inquiry concerning a charge -- would not be frustrated by a grant of the requested waiver. As is done today, even after the requested waiver expires, Delhi will continue to provide its local telephone number on the bill in order to allow customers to contact it about AOS provider charges. When a customer questions an AOS provider charge, Delhi will, at the customer's option, provide the AOS provider's toll free number or will seek to establish a three-way conference call with the AOS provider (or its billing clearinghouse) in order that the customer may address his/her concern about a charge. Accordingly, the goal of the TIB Requirements will be advanced. Waiver of the TIB Requirements as requested herein will merely maintain the status quo until such time as the billing system modifications are made and successfully tested, while effecting the goals of these requirements in an alternative manner.

Finally, Delhi notes that, in the absence of this limited waiver of the TIB Requirements, its ability to bill for isolated customer-originated traffic on behalf of AOS providers would be in jeopardy. Facing the risk of non-compliance with the TIB Requirements, Delhi may be forced to consider terminating its billing relationship with the AOS providers. This, in turn, may increase the cost to the AOS provider of billing, thereby inhibiting the continued development of a competitive interexchange service marketplace.

Even assuming that harm to the public interest is present, that harm does not outweigh the public interest benefits arising from a grant of this request. As indicated, Delhi's customer concerns over AOS provider charges have been minimal. Moreover, Delhi anticipates that its

experience will not change during the time that the requested waiver is in place.

III. Conclusion

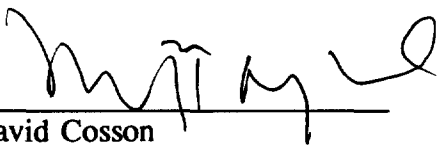
Because Delhi is technically incapable of complying with the TIB Requirements by November 12, 1999, a grant of this request until April 1, 2000 will ensure that Delhi can implement and successfully test the billing system software upgrades required to implement the TIB Requirements in an efficient manner, while avoiding unnecessary expense or raising additional Year 2000 compliance issues. At the same time, the consumer goals of the TIB Requirements will not be frustrated by a grant of this request. Rather, such goals will be furthered by Delhi as it continues to provide customer assistance and responsiveness when questions are received regarding charges from particular carriers.

Accordingly, in the event that action on the USTA Petition and/or the Associations' Petition does not grant the extent of the relief requested herein, Delhi requests a waiver of the requirements of 47 C.F.R. §§ 64.2401(a)(2) and 64.2401(d) until April 1, 2000.

Respectfully submitted,

Delhi Telephone Company

By



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November 4, 1999

**Declaration of Steven Barker
Vice President and General Manager of
Delhi Telephone Company**

I, Steven Barker, Vice President and General Manager of Delhi Telephone Company ("Delhi"), do hereby declare under penalties of perjury that I have read the foregoing "Petition for Temporary, Limited Waiver" and the information contained therein regarding Delhi is true and accurate to the best of my knowledge, information, and belief.

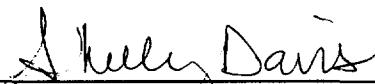
Date 04/Nov 99



Steven Barker
Vice President and General Manager

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Petition for Temporary, Limited Waiver" of Delhi Telephone Company was served on this 4th day of November, 1999 by hand delivery to the following parties:


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